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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,607	10/26/2005	Chhiu-Tsu Lin	2384.00060	2108
Kenneth I Kohn Kohn 7 Associates 30500 Northwestern Hwy Suite 410 Farmington Hills, MI 48334			EXAMINER JARRETT, LORE RAMILLANO	
			ART UNIT 1797	PAPER NUMBER
			MAIL DATE 12/31/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/540,607

**Applicant(s)**

LIN, CHHIU-TSU

**Examiner**

LORE JARRETT

**Art Unit**

1797

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 12-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 6/27/05 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Status of Claims***

1. In applicant's reply filed on 9/30/09, applicant amended claims 7 and 11. Claims 1-17 are pending. Claims 12-17 are withdrawn. Claims 1-11 are pending and are under examination.

### ***Election/Restrictions***

2. This application contains claims 12-17 are drawn to an invention nonelected without traverse in the reply filed on 2/27/09. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Specification***

3. The objections to the disclosure are withdrawn.

### ***Claim Rejections - 35 USC § 112***

4. The rejection of claim 11 under 35 U.S.C. 112, second paragraph, is withdrawn.

### ***Prior art rejections***

5. The rejections over the prior art are maintained.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. **Claims 1-11** are rejected under 35 U.S.C. 102(b) as being anticipated by Dunn et al. ("Dunn," US 5200334, previously cited).

As to claims 1, 6, and 11, Dunn discloses a charge-transfer chemical sensor comprising: a sol-gel material affixable to a predetermined surface, and indicating means within said sol-gel for detecting and signaling a presence of at least one chemical (i.e. col. 1, line 53 to col. 2, line 13; col. 7, line 59 to col. 10, line 5). Furthermore, the claim language, "indicating means . . . for" does not invoke 35 USC 112, sixth paragraph because the claim language appears to be modified by sufficient structure, material, or acts for achieving the specified function.

As to claims 2 and 7, Dunn discloses that the indicating means includes colorimetric signal means for signaling the presence of at least one chemical (i.e. col. 1, line 53 to col. 2, line 13; col. 7, line 59 to col. 10, line 5). Furthermore, the claim language, "colorimetric signal means for" does not invoke 35 USC 112, sixth paragraph because the claim language appears to be modified by sufficient structure, material, or acts for achieving the specified function.

As to claims 3 and 8, Dunn discloses that the signal means is selected from the group consisting essentially of an indicator with Cu (11), an indicator with CuZnSOD (i.e. col. 1, line 53 to col. 2, line 13; col. 7, line 59 to col. 10, line 5).

As to claims 4 and 9, Dunn discloses that the sol-gel is an optically transparent xerogel (i.e. col. 1, line 53 to col. 2, line 13; col. 7, line 59 to col. 10, line 5).

As to claims 5 and 10, Dunn discloses that his sensor is capable of detecting components selected from the group consisting essentially of chemical warfare agents,

agricultural pesticides, and insecticides because Dunn discloses the structural features of the claimed sensor. Furthermore, the type of chemical being detected does not appear to positively limit the structure of the claimed sensor.

8. **Claims 1-11** are rejected under 35 U.S.C. 102(b) as being anticipated by Wicks et al. ("Wicks," US 5637507, previously cited).

As to claims 1, 6, and 11, Wicks discloses a charge-transfer chemical sensor comprising: a sol-gel material affixable to a predetermined surface, and indicating means within said sol-gel for detecting and signaling a presence of at least one chemical (i.e. col. 4, line 3 to col. 5, line 10; col. 5, line 49 to col. 10, line 64). Furthermore, the claim language, "indicating means . . . for" does not invoke 35 USC 112, sixth paragraph because the claim language appears to be modified by sufficient structure, material, or acts for achieving the specified function.

As to claims 2 and 7, Wicks discloses that the indicating means includes colorimetric signal means for signaling the presence of at least one chemical (i.e. col. 4, line 3 to col. 5, line 10; col. 5, line 49 to col. 10, line 64). Furthermore, the claim language, "colorimetric signal means for" does not invoke 35 USC 112, sixth paragraph because the claim language appears to be modified by sufficient structure, material, or acts for achieving the specified function.

As to claims 3 and 8, Wicks discloses that the signal means is selected from the group consisting essentially of an indicator with Cu (11), an indicator with thymol blue/Fichlor (i.e. col. 4, line 3 to col. 5, line 10; col. 5, line 49 to col. 10, line 64).

As to claims 4 and 9, Wicks discloses that the sol-gel is an optically transparent xerogel (i.e. col. 4, line 3 to col. 5, line 10; col. 5, line 49 to col. 10, line 64).

As to claims 5 and 10, Wicks discloses that his sensor is capable of detecting components selected from the group consisting essentially of chemical warfare agents, agricultural pesticides, and insecticides because Dunn discloses the structural features of the claimed sensor. Furthermore, the type of chemical being detected does not appear to positively limit the structure of the claimed sensor. (i.e. col. 4, line 3 to col. 5, line 10; col. 5, line 49 to col. 10, line 64).

#### ***Response to Arguments***

9. Applicant's arguments filed 9/30/09 have been fully considered but they are not persuasive.

In response to applicant's argument that Dunn and Wicks do not disclose the claim language which recites, "affixable to a predetermined surface," the Office respectfully does not find this argument to be convincing. The cited claim language appears to be intended use language because it recites the intended use of the sol-gel material, which is to be capable of being "affixed" to a predetermined surface. With regard to the "predetermined surface" language, such language is not positively claimed since it is recited in the intended use language.

In response to applicant's arguments, the recitation "charge-transfer chemical" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the

claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

### ***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LORE JARRETT whose telephone number is (571)272-7420. The examiner can normally be reached on Mon. to Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LORE JARRETT/  
Examiner, Art Unit 1797

12/23/09